

TERMS AND CONDITIONS OF ENGAGEMENT

These Terms and Conditions of Engagement ("Conditions") apply to every appointment of Vivus Technical ("the Engineer") by the client named in the accompanying quotation or fee proposal ("the Client") for the provision of structural engineering services ("the Services") in respect of the property or project identified therein ("the Project").

These Conditions, together with the Engineer’s written quotation or fee proposal, form the complete agreement ("the Contract") between the Engineer and the Client. Where any conflict arises between these Conditions and the quotation, the terms of the quotation shall take precedence in respect of the specific fees and scope of services described.

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1. Scope of Services & Standard of Care

- 1.1. Standard of Care: The Engineer shall exercise the reasonable skill, care, and diligence to be expected of a qualified and experienced structural engineering practice undertaking projects of a similar scope, size, and complexity.
- 1.2. Included Services: The Services shall be limited exclusively to those explicitly listed within the accepted written quotation or fee proposal.
- 1.3. Excluded Services: Unless expressly agreed in writing and included within the quotation, the Engineer's scope does not include:
 - Architectural design, space planning, or interior layout work.
 - Planning advice or submissions to the local planning authority.
 - Party Wall Act 1996 advice, notices, or surveying services.
 - Health & Safety duties, including the role of Principal Designer or Principal Contractor under the CDM Regulations 2015.
 - Geotechnical or ground investigation surveys, contamination assessments, or soil testing.
 - Asbestos surveys, identification, or management.
 - Temporary works design, construction sequencing, or shoring/propping calculations.
 - Drainage design, flood risk assessments, or highway engineering.
 - Site supervision, contractor management, or Clerk of Works duties.

2. Quotation Validity & Client Acceptance

- 2.1. Validity: Quotations issued by the Engineer are valid for 30 calendar days from the date of issue unless stated otherwise in writing. The Engineer reserves the right to revise or withdraw a quotation prior to written acceptance by the Client.
- 2.2. Acceptance: Formal instructions to proceed, whether by written confirmation, signature, email instruction, or payment of a deposit, shall constitute full acceptance of these Conditions by the Client.

3. Fees, Invoicing & Payment Terms

- 3.1. Fee Structure: Services are supplied on the fee basis set out in the quotation (fixed fee, time-charge, or staged payments).
- 3.2. Advance Payment: Unless otherwise agreed in writing:
 - A 50% deposit of the total quoted fee is due upon appointment prior to the commencement of any design work, calculations, or site visits.
 - The remaining 50% balance is due prior to the release of final calculations, structural drawings, or design certificates.

- 3.3. Withholding Deliverables: Deliverables—including structural calculations, drawings, and Building Control compliance certificates—remain the property of the Engineer and will not be issued until all outstanding fees are paid in full.
- 3.4. Payment Period: Invoices must be paid within 7 calendar days of the invoice date.
- 3.5. Late Payment Interest: The Engineer reserves the right to charge interest on overdue sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (or statutory consumer equivalents) at a rate of 8% per annum above the Bank of England base rate, calculated daily from the due date until full payment is received.
- 3.6. Suspension of Services: If an invoice remains unpaid after the due date, the Engineer reserves the right to suspend all further work on the Project upon giving 24 hours' written notice. The Engineer shall not be liable for any project delays or losses resulting from such a suspension.

4. Additional Services & Revisions

- 4.1. Included Revisions: The quoted fee includes one (1) minor revision to the structural calculations or drawings, provided such revisions stem from minor adjustments to the initial design concept or reasonable Building Control comments.
- 4.2. Chargeable Revisions: Any structural alterations or redesign work resulting from:
- Client changes to architectural layouts, room dimensions, or project scope;
 - Incorrect measurements or information provided by third parties or the Client;
 - Unexpected site conditions uncovered during construction;

shall constitute an Additional Service and will be charged at the Engineer's standard hourly rate or a mutually agreed fixed fee.

5. Client Obligations & Design Assumptions

- 5.1. Provision of Information: The Client shall provide the Engineer with all necessary, accurate, and complete information regarding the Project in a timely manner, including existing architectural drawings, site dimensions, utility layouts, and known site hazards.
- 5.2. Reliance on Third-Party Data: The Engineer is entitled to rely on the accuracy of drawings, site measurements, and structural information supplied by the Client, the Client's architect, or the main contractor without independent verification unless instructed in writing to verify them.
- 5.3. Access to Property: The Client shall ensure safe, unobstructed access to the property or site for any site visits or inspections required under the agreed scope.

6. Existing Structures & Hidden Defects

- 6.1. Visible Conditions Only: Structural assessments and calculations are based on non-destructive visual observations made at the time of any site visit. The Engineer accepts no liability for defects,

deterioration, or non-compliant structural work hidden behind wall finishes, floorboards, ceilings, or below ground.

- 6.2. Intrusive Investigations: Where hidden structural elements require confirmation (e.g., steel beam bearing lengths, foundation depths, joist spans), the Client is responsible for employing a contractor to undertake intrusive "opening-up" works at their own expense.
- 6.3. Unforeseen Conditions: If unforeseen structural defects or hidden conditions are uncovered during construction, the Client must notify the Engineer immediately. Any required redesign will be treated as an Additional Service under Clause 4.2.

7. Site Inspections & Construction Works

- 7.1. Non-Supervisory Role: Site visits made by the Engineer are brief, periodic visual inspections carried out solely to verify general structural layout compliance with the issued design. Site visits do not constitute contractor supervision, project management, or a full structural survey.
- 7.2. Frequency of Inspections: Site inspections are performed strictly on an instructed basis as specified in the quotation. The Engineer is not obligated to attend the site automatically during construction.
- 7.3. Completion Certificates: The Engineer does not issue overall building completion certificates or collateral warranties unless explicitly agreed in writing prior to appointment and backed by appropriate scope definition.

8. Contractor Responsibilities & Site Safety

- 8.1. Workmanship: The contractor and specialist sub-contractors remain solely responsible for construction workmanship, temporary works support, site safety, and execution of the design in accordance with current Building Regulations and British Standards / Eurocodes.
- 8.2. Dimension Verification: Contractors must independently check and verify all critical dimensions, structural levels, and existing construction details on site prior to fabrication or construction. The Engineer accepts no liability for costs or delays arising from contractor failure to check dimensions before ordering steelwork or timber.
- 8.3. No Scaling: Design dimensions must not be scaled directly from structural drawings. Figured dimensions only must be followed.
- 8.4. Unapproved Alterations: Any alteration, cutting, trimming, or modification of structural members, steel beams, or load-bearing elements without the Engineer's prior written approval completely voids the Engineer's design liability for those elements.

9. Intellectual Property & Digital Deliverables

- 9.1. Ownership: All original calculations, drawings, specifications, reports, and digital files prepared by the Engineer remain the intellectual property of the Engineer.

- 9.2. Client Licence: Upon receipt of full payment of all outstanding fees, the Client is granted a non-exclusive, non-transferable licence to use the issued structural calculations and drawings solely for the specified Project and property location.
- 9.3. Prohibition of Reuse: Deliverables must not be copied, modified, transferred, or reused for any other project, site, or property without the Engineer's express written consent.
- 9.4. Electronic Deliverables: Deliverables will be supplied in PDF format only. CAD files (DWG/DXF), BIM models, or raw calculation spreadsheets (e.g., Excel) remain the internal property of the Engineer and will not be issued unless specifically agreed in writing.

10. Limitation of Liability & Insurance

- 10.1. Financial Cap: The Engineer's maximum aggregate liability to the Client arising out of or in connection with the Contract—whether in contract, tort (including negligence), breach of statutory duty, or otherwise—shall be strictly limited to the lower of:
- £1,000,000 (One Million Pounds Sterling); or
 - The actual amount recoverable under the Engineer's Professional Indemnity Insurance policy at the time the claim is settled.
- 10.2. Consequential Loss: To the maximum extent permitted by law, the Engineer shall not be liable for any indirect, consequential, or economic losses, including but not limited to loss of profit, loss of use, delay damages, or loss of contracts.
- 10.3. Net Contribution: The Engineer's liability shall be limited to such sum as it would be just and equitable for the Engineer to pay, having regard to the extent of the Engineer's responsibility for the loss or damage, on the assumption that all other consultants, contractors, and sub-contractors are held responsible to the same extent and have paid their proportional share.
- 10.4. Duration of Liability: No action or proceedings arising out of or in connection with the Contract shall be commenced against the Engineer after the expiry of six (6) years from the date of completion of the Services or the date of the final invoice, whichever is earlier.
- 10.5. Statutory Exceptions: Nothing in these Conditions shall exclude or limit liability for death or personal injury caused by negligence, fraud, or any liability that cannot be excluded under the laws of England and Wales.

11. Third-Party Reliance

- 11.1. Intended Recipient: The Engineer's work, calculations, and reports are prepared exclusively for the named Client and the relevant Local Authority Building Control (or Approved Inspector) for the purpose of demonstrating statutory compliance for the specified Project.
- 11.2. No Third-Party Rights: No third party—including prospective property buyers, estate agents, tenants, mortgage lenders, or future owners—may rely upon the Engineer's deliverables without the express written permission of the Engineer and payment of an appropriate reliance fee where applicable.

11.3. Contracts (Rights of Third Parties) Act: A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

12. Cancellation & Termination

12.1. Termination by Client: The Client may terminate the appointment at any time by giving seven (7) days' written notice to the Engineer.

12.2. Payment on Termination: In the event of termination by the Client before completion of the Services:

- The initial 50% deposit is non-refundable to cover initial site visits, scheme setup, preliminary engineering analysis, and administrative overheads.
- The Client shall pay for all work completed up to the effective date of termination on a time-charge basis for any work exceeding the value of the initial deposit.

12.3. Termination by Engineer: The Engineer may terminate the appointment immediately if the Client fails to pay an outstanding invoice, breaches these Conditions, fails to provide essential project information, or acts aggressively or unreasonably towards the Engineer.

13. Verbal Advice & Emergency Works

13.1. Non-Binding Status: Any advice, comments, or opinions expressed verbally by the Engineer during site visits or phone conversations are given in good faith but are informal and non-binding.

13.2. Written Confirmation: Verbal advice shall only become legally binding on the Engineer once confirmed in writing by the Engineer in a formal email, structural report, or drawing revision.

14. Computer Software & AI Tools

14.1. Analysis Tools: The Engineer utilizes standard, industry-recognized structural engineering software, design spreadsheets, and digital analytical tools to assist in calculations and modeling.

14.2. Engineering Judgment: All calculations, designs, and reports produced using digital software or AI-assisted tools are reviewed, verified, and validated through professional engineering judgment prior to issue. The Engineer retains full responsibility for the final verified structural design.

15. Consumer Rights & Statutory Cooling-Off Period

15.1. Consumer Contracts Application: Where the Client acts as a consumer (i.e., a private individual contracting for work outside their trade, business, or profession), statutory consumer protection rights apply under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

15.2. Right to Cancel: Consumer Clients have the right to cancel this Contract within 14 calendar days from the date of appointment ("Cooling-Off Period") without giving any reason, by notifying the Engineer in writing.

15.3. Early Performance Request: If the Client requests the Engineer to commence Services immediately during the 14-day Cooling-Off Period, the Client acknowledges that:

- They waive their right to cancel once the Services have been fully performed.
- If they cancel before the Services are fully completed, they must pay a proportionate fee for the work performed up to the point of cancellation.

16. Data Protection (GDPR)

16.1. Compliance: Both parties shall comply with all applicable requirements of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.

16.2. Data Use: The Engineer collects and processes personal data (such as names, addresses, emails, and phone numbers) solely for the purpose of executing the Services, issuing invoices, and fulfilling legal or professional record-keeping obligations.

16.3. Third-Party Sharing: Personal data will not be shared with third parties except as necessary to perform the Services (e.g., submitting structural details to Building Control or local authorities) or where required by law.

17. Force Majeure

17.1. Uncontrollable Events: Neither party shall be liable for any failure or delay in performing its obligations under this Contract where such failure or delay results from events, circumstances, or causes beyond its reasonable control ("Force Majeure Event").

17.2. Scope of Events: Force Majeure Events include, but are not limited to: severe weather, natural disasters, failure of public utilities, industrial disputes, major site access restrictions, sudden structural collapses not caused by the Engineer, epidemics, or acts of government.

17.3. Time Extensions: In the event of a Force Majeure Event, the time for completion of the Services shall be extended by a period equal to the delay caused.

18. Governing Law & Dispute Resolution

18.1. Jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of England and Wales.

18.2. Courts: The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract.

18.3. Amicable Resolution: Before initiating legal proceedings, both parties agree to attempt in good faith to resolve any disagreement or dispute through direct negotiation or informal mediation.